UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	**CASE NO: 2:13-CV-00193**
	)	
Plaintiffs,	)	**CIVIL**
	)	
vs.	)	**Corpus Christi, Texas**
	)	
RICK PERRY, ET AL.,	)	**Wednesday, August 27, 2014**
	)	
Defendants.	)	**(9:01 a.m. to 10:23 a.m.)**

PRETRIAL CONFERENCE

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances:	**See Next Page**
Court Recorder:	**Genay Rogan**
Clerk:	**Brandy Cortez**
Court Security Officer:	**Adrian Perez**
Transcriber:	**Exceptional Reporting Services, Inc.** **P.O. Box 18668** **Corpus Christi, TX 78480-8668** **361 949-2988**

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Non-Party Senators and Representatives:	**STEPHEN TATUM, ESQ.** **JAMES ECCLES, ESQ.** **ALICE LONDON, ESQ.**

Corpus Christi, Texas; Wednesday, August 27, 2014; 9:01 a.m.

Call to Order

THE COURT: You can be seated. The Court calls Cause Number 2:13-00193, *Veasey, et al versus Perry, et al.*

The Plaintiffs will announce for the record.

MR. DUNN: Good morning, your Honor. This is Chad Dunn and Gerry Hebert present in the courtroom on behalf of Veasey LULAC Plaintiffs.

My co-Counsel, Armand Derfner and Emma Simpson (Phonetic) are on the telephone and will not be speaking.

THE COURT: All right.

MR. ROSENBERG: Good morning, your Honor.

THE COURT: Good morning.

MR. ROSENBERG: Ezra Rosenberg on behalf of the Texas State Conference of NAACP Branches and MALC (Phonetic), and with me are Mark Posner and Vionette (Phonetic) Perez, and Amy Rudd.

THE COURT: Thank you.

MS. VAN DALEN: Good morning, your Honor, Marinda -- excuse me, I'm sorry. Good morning, your Honor.

THE COURT: Good morning.

MS. VAN DALEN: Marinda Van Dalen, Texas Rio Grande Legal Aid on behalf of the Ortiz Plaintiffs. With me today is my co-Counsel, Robert Doggett.

THE COURT: Okay.

MR. HAYGOOD: Good morning, your Honor.

THE COURT: Good morning.

MR. HAYGOOD: Ryan Haygood for the Texas League of Young Voters and Imani Clark. I'm here with my colleagues, Natasha Korgaonkar and Danielle Conley, and Kelly Dunbar is also on the telephone.

THE COURT: All right.

MR. DELLHEIM: Good morning, your Honor.

THE COURT: Good morning.

MR. DELLHEIM: Richard Dellheim for the United States. With me at Counsel table is Elizabeth Westfall, Bradley Heard and Daniel Freeman.

THE COURT: All right.

MR. SCOTT: Your Honor, John Scott along with the rest of the State of Texas.

THE COURT: Okay.

MR. SCOTT: Representatives of the State of Texas.

THE COURT: Okay, in the courtroom.

Okay. We're here for a Final Pretrial Conference regarding this matter. And, I think, Mr. Scott, there was an issue regarding the use of the non-party legislators' document, and I thought we'd address that first so then we could move to the issues regarding the parties only.

MR. SCOTT: Sure, your Honor. And I don't know that I heard any of the other folks on the line. Reed Clay from our

office is going to carry the water on that one for the argument, but our -- I don't know if Ms. London is on the line or --

MS. LONDON: I'm right here, your Honor.

MR. SCOTT: A pleasure, Alice.

THE COURT: Okay. I just -- I got an email on that yesterday I believe, and I don't know much about what's going on other than an email was sent to Brandy regarding you-all wanted to present this issue to the Court today about the use of documents regarding these non-party legislators.

MR. SCOTT: I think that's right, your Honor. I think, so from a little bit of perspective, there is the issue that's still out there, I think -- I believe later in the hearing today the United States is going to tee up the legislative privilege issue regarding a bunch of the folks that voted for the Bill. These are a group of Senators and Representatives that were on the opposite side of that Bill.

And our position is Legislature acts as a body and so, really, if we're going to let one side of the documents in before the Court for its review, we'd like the Court to get the full picture of the information out there. So that is the background behind it, I guess, the Senate documents, and then there's another group of us, the House documents.

Ms. London is representing the State Senators, I believe is correct, but the House votes are being represented

by some folks from a (indiscernible) unit out of the O of AG and two other attorneys, I don't know if they're related.

THE COURT: Are they here?

MR. ECCLES: Your Honor, this is James Beau Eccles. I've joined on the line, and we are representing the -- the non-party State Representatives, at least a number of them, and I can name them if you wish? But we are the ones who submitted Docket Number 386, which was a Motion to Quash the Subpoenas initially.

THE COURT: Okay. So what are you-all presenting to the Court today regarding these non-party Legislators?

MR. SCOTT: Well, your Honor, we --

MS. LONDON: Judge, I'm prepared, since it's my Motion --

THE COURT: Okay, you can approach.

MS. LONDON: -- to start the presentation. I've got a --

THE COURT: And I don't know exactly what the issue is today so you can start from there. All I got was an email saying "We want to put something on the record about the use of these nonparties' documents."

MR. SCOTT: Well, we --

MS. LONDON: And -- and, Judge, I've got a book that has the pertinent --

THE COURT: Okay.

MS. LONDON: -- documents where I think we are, and I'll give you the procedural background so you understand the context of the decision that we're asking you to make.

I represent today six Senators and, for the record, that's Senators Watson, West, Whitmire, Ellis, Uresti and Zaffirini, and on the cover of your book I have the -- the chart so you can see the six Senators.

Procedurally, in June of 2014, the State served these Senators and some others with a subpoena asking for all documents in their possession related to voter ID.

Within two to three weeks in July of 2014 these Senators filed a Motion to Quash, a Motion for Protective Order, but at the same time they produced all nonprivileged documents. They also provided detailed privilege logs for all documents that they were asserting a legislative or attorney-client privilege.

The hope was that with the offer of the privilege logs we'd be able to narrow our discussion to some documents that actually pertained to the issues before the Court.

The Court set a hearing on my Motion to Quash and the Motion for Protective Order in August, and on the eve of that hearing we reached an agreement, and the agreement is in your notebook that I've put in front of you that essentially said we would follow the Court's dictate in its opinion that it issued related to the Department of Justice's similar request for

documents.

But what we would do is we would provide all of the documents, we would make them highly confidential, attorneys' eyes only so that the State could actually look at the documents and say which ones it actually needed so that we could come before the Court and only use the Court's time for the actual documents.

And then it was contemplated that the State would give us the opportunity by giving us two days' notice of those documents they intended to use so we could then address the legislative privilege in an actual context, not a theoretical. These are the documents that need to come in at trial; here's why they're relevant, so that the Senators could weigh whether they wished to waive the privilege as to a particular document pertinent to a particular issue.

When the deadline came to -- for the State to designate which documents, and to give you some context, we're talking, I'm guesstimating somewhere between 8 and 10,000 pages of documents. When the time came for the State to designate the documents it intended to use, you'll see on the first page of your notebook the letter where they designated -- of the eight Senators, they have designated six Senators' documents, but they designated 100 percent of the 8 to 10,000 pages.

So that -- under the agreement we reached is that we would then come to the Pretrial today to discuss the specific

admissibility of the documents that are at issue between these parties. So procedurally that's the context.

And I want to say, first of all, I have been told by some of the parties that the -- there's been a great deal of discussion about what's good for the goose is good for the gander, and I want to take that to heart and refer to the Court's opinion because we agree in that the opinion and the language I'm referring to is also in the notebook and I've highlighted the specific language. The Court has said there is a legislative privilege, we don't need to retread that ground; that it's a qualified privilege, we don't need to retread that ground.

The Court has said there are five factors that the Court must look at and we agree that while the Court believes those five factors applied, when looking at the proponents of the Bill, those five factors, likewise, should apply to the opponents of the Bill, and -- and just to put it in context, I represent six Senators who all voted against the voter ID law, and the documents that are being sought are documents of people who opposed the legislation that is being challenged in this Court. And whether they have a legislative privilege should be put to the same test as the proponents of the Bill, and those five factors as mentioned in the Court's Opinion, really three of the factors, I believe, the Court will decide the same way for this hearing.

But there are two factors that are different, substantially different. One is the relevance of the documents and, secondly, the availability of the other evidence. And I think the relevance gets down to the very important sentence in the Court's Opinion, which if you look at the third page of the Opinion, the Court put the task to the parties seeking the documents which, in this case, that was the United States. And the Court said "That the evidence that the United States -- United States seeks to compel is highly relevant to its claim" and that was the test that the Court used.

Well, that is the test that, likewise, should be equally applied here today, and the question is can Texas prove that the evidence it seeks, the 8 to 10,000 pages, is highly relevant to any specific claim it is making in this case?

And what about the State's case depends upon the Court understanding what the Senators who opposed the legislation did? Why does it make a difference that those whose strategy failed, who did not prevail, what difference does it make to any issue that this Court has to decide? That's the relevance test.

So here we are, we have six Senators who voted against the Bill, and on the cover of your notebook I have put together a chart so you can kind of get a context for this, none of the -- none of the 10,000 pages of -- none of the documents of any of these six Senators appears on the State's

Exhibit List in this case. They have not identified that they intend to use any of those documents specifically in the trial next week.

THE COURT: Okay, so why are we talking about them?

MR. SCOTT: Your Honor, none of these documents -- well, first of all, the Court puts this decision upon Texas being able to get these documents and even attempt to review these documents until last week, I think -- I'm sorry, the week before last. So we were in the position of not even having the chance to go through these documents, and instead of putting all of these documents into the exhibit list, we wanted to thumb through these documents and we will go through and then when we see something it -- your original Order was it's up to the parties then to present it to the Court to make a ruling whether legislative privilege applies or not before we attempt to introduce it into evidence. To put it on the Exhibit List means we're attempting to produce -- to introduce it into evidence. Our reading of your Order is really very clear, until we get a ruling on the legislative privilege we're not to attempt to introduce this -- any of these matters to the Court for -- as evidence, i.e. mark them as exhibits or potential exhibits, and so that's why none of these are marked as exhibits.

THE COURT: So you don't know if you're using any of this stuff yet?

MR. SCOTT: No, we know -- we know a number of these things. For instance, there are documents in here from a relevance standpoint. One of the arguments that the Plaintiffs -- the party Plaintiffs are making in this case is that there was this concerted strategy to get this Bill through the Legislature.

Well, we find through these documents there was a concerted strategy on the part of the Defendants which one would expect in a legislative body to try and oppose the passage of this Bill, for example, the interaction of the Department of Justice, it appears inferentially that there was some --

THE COURT: But what does that matter to the issue that's before the Court?

MR. SCOTT: Well, it matters when we're talking about the Senate factor as it is that some -- that their experts are saying that it was part and parcel of the State's strategy on the purpose or intent of the statute itself; that some of these legislators who had a steel-minded purpose to enact a statute which would disproportionately affect minorities.

What we see is the normal legislative process going on behind the scenes in the body and, at the end of the day, a Bill being passed out of that body.

THE COURT: All right. Ms. London?

MS. LONDON: And the difficulty I have is if Mr.

Scott has specific documents that --

THE COURT: Right, that's -- I mean, it's inefficient, I think, for me to try to really address this right now --

MS. LONDON: Yeah, and --

THE COURT: -- unless I have specific documents that we're looking at.

MS. LONDON: And our agreement was that he would give me notice of the specific documents so we could use the Court's time only for those specific discussions of relevance, not academically, not theoretically, but actual.

THE COURT: Yeah. I'm not going to address this right now until I know what we're dealing with.

MS. LONDON: And so, Judge, in terms of our agreement that we would get it done at Pretrial --

THE COURT: Then you-all can visit further when I finish if you-all would like to do that. And I'm available all day. I just kind of don't want to waste time on matters that you-all need to discuss further.

MR. SCOTT: And we can limit the universe greatly -- what we had as part and parcel of that agreement was by noon on Monday we would let them know which documents, and so any documents we did not identify by noon of this past Monday we had waived our ability to even attempt to try and get legislative privilege looked at on that.

MS. LONDON: I am happy to look at any documents. I'm here from Austin. It was not -- I don't have enough of a role to be here for trial. If we want to address specific documents this afternoon I'm happy to do that.

MR. SCOTT: I'll dedicate the rest of my afternoon to it.

THE COURT: Okay. I'm going to proceed with the Final -- the other matters. You-all can certainly visit, I mean, I don't know how long we're going to be at it, and then I'm available the rest of the week except Friday probably, if we need to continue matters. Right, Brandy?

THE CLERK: Yes, your Honor.

THE COURT: I think we've got matters set on Friday?

THE CLERK: Yes, your Honor.

THE COURT: So --

MR. ECCLES: Then, your Honor, if I may interject? This is James Eccles, as well, from the -- from Austin and I represent some of these people -- the Defendants that are in the exact same posture as the State Senators that are wanting to suppress it.

THE COURT: Okay.

MR. ECCLES: And we have the exact same issues, and I certainly would like to be able to address not only legislative privilege, but before that -- after that, the admissibility, trying to get at that, I don't believe that it can pass a

threshold of relevance.

THE COURT: I know, we're kind of past the law here. I need to look at specific documents that are wanting to be opened or disclosed, and I don't think you-all are ready for that at this point, it sounds like to me, you-all need to confer further. All right? So if there's nothing else on that matter I'm going to proceed.

There are several Motions pending and the first one I'll take up is I guess is the United States' Motion to admit deposition and trial testimony from the *Texas versus Holder* case. And there was no response filed, but it's my understanding that's opposed? Is that correct?

MR. FREEMAN: Yes, your Honor, it's our understanding it's opposed as well, although we have not received a response proffer from the Defendants to the substance of the Motion.

Your Honor, there are two categories of evidence that are at issue in this Motion. The first consists of depositions taken during *Texas v Holder*, and under Rule 32(a)(8) of the Federal Rules of Civil Procedure:

> "Prior deposition testimony for unavailable witnesses may be used in a later action involving the same subject matter between the same parties or their representatives or successors in interest to the extent as if they were taken in the later action."

Now Defendants have agreed, and all parties have

agreed in this litigation to waive the 100 mile rule with regard to the availability of witnesses, and so it's the position of the United States that there is no remaining impediment to admitting depositions that were taken during *Texas v Holder.*

THE COURT: And I thought we had discussed this at one of our Status Hearings. Was it just regarding certain witnesses that there was an agreement on? Or was there no agreement on any witnesses?

MR. FREEMAN: Your Honor --

THE COURT: I just thought this came up at some point.

MR. FREEMAN: -- the parties were conferring over a long period of time attempting to resolve this. I believe in August the ultimate decision by Defendants and Mr. Clay can speak to it, was that they were not going to agree to the admission of any prior depositions or testimony taken in *Texas v Holder.*

THE COURT: But wasn't there some discussion about limiting some depositions to new matters which then led me to believe that well, then, the prior testimony is going to come in?

MR. FREEMAN: Yes, your Honor.

THE COURT: But I don't know if that was only regarding certain witnesses or in general?

MR. FREEMAN: With regard to -- with regard to Major Mitchell there was certainly discussion that Major Mitchell would only be deposed with regard to matters not previously addressed in his testimony in *Texas v Holder.*

Moreover, with regard to the legislators, there were multiple arguments made that legislators should not be made to sit for repetitive questioning when they had already answered the same questions in *Texas v Holder.* As a result --

THE COURT: So it's certain witnesses that there was an agreement that prior testimony would come in?

MR. FREEMAN: The agreement was specifically, I believe, with regard to Major Mitchell, but that was not a United States witness and it -- but Mr. Rosenberg has represented that that's the case.

THE COURT: I thought early on, even before the Major Mitchell issue there was some discussion about the efficiency of using some prior -- and, you know, I may be wrong, but I thought that was discussed.

MR. CLAY: Your Honor, there was -- there were -- we have engaged, as Mr. Freeman has just stated, we engaged in a lot of conversations about the use of deposition testimony at trial.

One of the things that we were able to agree on some time ago, which we presented to you, was that we would be able to designate a portion of the depositions taken in this case

for use at trial.

We never reached an agreement regarding the use of Section 5 depositions --

THE COURT: Okay.

MR. CLAY: -- and if -- your Honor, we did not file a response, but we would point out that a very analogous case to this is the *Rueston* (phonetic) case in San Antonio in which case they allowed the use of Section 5 depositions for impeachment purposes only, but not as evidence. And I think one of the -- one of the glaring differences between this case and that case is in that case a request was made before discovery was even really initiated, giving the parties an attempt to understand the universe of depositions that might have been used in that case, and even in that case the San Antonio Court said "No, we're not going to use Section 5 depositions at trial in this case. If you want testimony regarding this stuff, then you can -- then you need to retake the depositions or tread new ground," and that is, I think -- doing it here, after discovery has already closed, then making the decision to use Section 5 depositions for any purpose other than impeachment doesn't make a whole lot of sense since we don't have the opportunity to retake depositions or cross examine the witnesses that they propose to introduce into evidence.

MR. FREEMAN: Your Honor, if I could I -- it's

necessary for me to correct the record because Mr. Clay has misstated what has occurred in *Perez v Perry*.

Just yesterday in *Perez v Perry* litigation that I'm Counsel for the United States in, the Court said that it would take under advisement the United States' continuing request to admit similar deposition testimony in that case. The Court has not rejected the use of deposition testimony in that case.

What has happened, and which I will address later, is that the Court has said it would not admit trial testimony from *Texas v United States*, the analogous case in the District Court for the District of Columbia with regard to the redistricting because the Court in San Antonio was not going to limit the number of trial hours for which it was available, and so we're in a very different circumstance.

But with regard to the deposition testimony, which I would like to address first and to complete my presentation, no such decision has yet been made by the San Antonio Court and I'm happy to provide the Court with a copy of the transcript from yesterday's closing arguments if that's necessary.

With regard to the deposition testimony here, precisely the same intent questions that were presented in --

THE COURT: Okay, they're already at closing and they still don't know if they're using depo testimony?

MR. FREEMAN: That's correct, your Honor.

THE COURT: Okay.

MR. FREEMAN: Um --

MR. CLAY: And, your Honor, we're happy to supplement the record also with the Orders from that Court because we have different understandings.

THE COURT: I don't need the Orders in that Court. We are where we are now and we just need to make a decision based upon what's before this Court regarding this case.

MR. CLAY: Okay.

MR. FREEMAN: Okay, and with regard -- with regard to these depositions, precisely the same questions are before this Court with regard to the intent question, and the parties here have had precisely the same motive to cross examine the witnesses in this case as they had in the prior case, and so Fifth Circuit precedent in both *Battle versus Memorial Hospital,* 228 F3d 544, and *United States v MacDonald,* 837 F2d 1287, to guide this Court to find that the deposition testimony taken in the prior action is equally admissible in this case as a deposition that was taken in this case.

If the Court has no further questions, then --

THE COURT: Okay. What is the intent on using the deposition testimony? I know at some point we had discussed -- maybe it wasn't deposition testimony, it was that the parties were going to give the Court maybe a declaration of a witness. That witness would then be available for cross examination. But was that just declaration, not depo testimony?

MR. FREEMAN: Your Honor, I believe that was with the idea that we would perhaps present some witnesses via pre-filed Direct testimony, and then make them available for Cross examination.

THE COURT: But when you're saying "Direct testimony," we're not -- you-all were not talking about deposition testimony?

MR. FREEMAN: No, we're not, your Honor,

THE COURT: That we're going to do it in the form of a declaration or --

MR. FREEMAN: Yes, your Honor.

THE COURT: Mr. Rosenberg?

MR. ROSENBERG: Your Honor, just to clarify, we did -- the parties did agree, as Mr. Freeman said, that any deposition taken in this case can be admitted as if the witnesses testified live with that reference to the 100 mile rule.

THE COURT: Okay.

MR. SCOTT: And I believe the Court also has led us -- and I think the parties have an understanding, that we're still going to have the ability to introduce declarations of witnesses that are going to be called live to try and cut down on the scope of the amount of testimony and the time that we spend in Court.

THE COURT: Uh-huh (yes.) Okay. All right.

MR. CLAY: Your Honor, just a few points. The issues in that -- Rule 32 allows for the use of prior testimony from other cases only in certain circumstances. The parties need to be the same. The parties are not the same here. Some of the parties are, but some of them are not; a lot of them are not.

The issues need to be the same. A lot of the issues in this case are very different from the ones in Section 5, and another in the Section 5 case, and another very large difference is the burden of proof is different.

Now Mr. Freeman pointed out one issue in which there might be some overlap, although I'm not sure I entirely agree with him, and that is on the issue of whether or not intent or purpose of the legislature. That's the only real issue that there -- that is there is any overlap on, so to the extent that any deposition testimony from that case should be allowed in this case would be on a single issue and one issue only.

THE COURT: But isn't that this whole case? Why would we be discussing other matters that aren't relevant to the case here?

MR. CLAY: I would love for that to be the only claim in this case, but I think that there's a --

THE COURT: Well, I mean, I guess my point is aren't we going to limit it to the issues that are involved in this case, and if there was something from that prior testimony that involved issues in this case, then you're looking at the same

subject matter?

MR. CLAY: And, again, I think that Rule 32 only allows it when the parties are the same, and I don't think -- and even with respect to purpose, in part because of the burden of proof, but in part because of Section 5 and the Department's interpretation of Section 5, that the intent question is not squarely the same as it is in this case, and so I think we're running into -- frankly, I just don't think Rule 32 contemplates the use of that testimony in this case because it talks about the same parties and the same issues, and that's just simply not the case here.

THE COURT: Okay.

MR. FREEMAN: Your Honor, if I may just make a couple quick additional points. Rule 32 specifically permits the use of deposition testimonies between the same parties or their representatives or successors in interest, and here the United States is the successor in interest to Attorney General Holder and the State of Texas is, indeed, the same party.

Moreover, the subject matters are sufficiently similar that the use -- the utility of the depositions is clear. While the retrogression standard under Section 5 does not apply here, the same types of evidence go toward the Results Test under Section 2. It's, perhaps, quite similar to using a deposition taken in a matter regarding a car crash in both a criminal proceeding and a subsequent civil proceeding.

There's -- there's no reason to force someone to take the deposition again, which is exactly why we would not want to retread the same ground and we would want to use the same depositions in this case.

If not permitted to put forth these depositions we would have to call numerous legislators, including Bill proponents who we did not intend to call and we would have to seek leave for additional hours in our case-in-chief because Bill proponents such as -- such as the House Sponsor of SB-14 are not likely to actually be called in this case, but their testimony through deposition would be sufficient, at least for the United States' purposes.

THE COURT: Okay.

MR. CLAY: Just one final point, your Honor. I think Mr. Freeman has just admitted that the issues aren't the same here. I mean, he just -- he just explained to the Court that the retrogression standard is not the standard here and, yes, some of the facts may be relevant to the two standards, but they are different standards, and that's the problem with using deposition testimony from another case and in a case like this, so I just don't think Rule 32 applies, your Honor.

THE COURT: All right, thank you. Anyone further to speak to that?

(No audible response)

THE COURT: The Court is going to grant the Motion to

admit the deposition trial testimony from the prior -- the *Texas versus Holder* case finding --

(Voices overlap)

MR. SCOTT: Your Honor --

MR. SPEAKER: Your Honor --

THE COURT: It involves the same subject matter and the same parties.

MR. FREEMAN: I'm sorry, but --

THE COURT: And it would be more efficient for this Court.

MR. FREEMAN: There's the second issue of the prior trial testimony. I apologize, I broke things up.

THE COURT: Okay. I was trying -- covering that.

MR. FREEMAN: Yes.

THE COURT: It goes under a different rule.

MR. SCOTT: Before we move onto that, and so we were able to do our counter-destinations and (indiscernible) that prior record we would respond and give the Court a more accurate picture, just to cover it --

THE COURT: Yes, absolutely.

MR. SCOTT: (indiscernible) picture.

MR. FREEMAN: Thank you, your Honor.

With regard to the prior trial testimony, Rule 32 does not apply, and so the United States has sought leave to introduce that prior testimony under Rule 807. The standard

under Rule 80 --

THE COURT: Is it the same argument? I know it's a different rule, 807, but I've read the briefing and the same argument from the Defense.

MR. CLAY: Yes, your Honor.

THE COURT: Yeah, so the Court has granted the Motion in its entirety --

MR. FREEMAN: Thank you.

THE COURT: -- unless there's anything further specifically to the Rule 807 you-all want to put on the record.

So anything else on that Motion?

(No audible response)

THE COURT: Okay. Then the other pending Motion was the United States' Motion to admit the declarations of County officials from various counties. That was DE-492; that was filed Friday. I don't see a response. My understanding it's opposed?

MR. FREEMAN: Yes, your Honor, it's me again. With regard to the 44 declarations, these are the declarations offered by objective neutral officials who work in individual counties and have made agreements with the State to accept applications for the election identification certificates that are created under SB-14 and these -- these declarations simply set out the locations, the hours, the number of applications they have received, the number of applications that they have

accepted, and the parties attempted to meet and confer over a lengthy period and the State eventually offered to agree to the admission of 43 of the 44, and the United States did not present one of them. And the United States simply did not see a rationale to exclude the last declaration given that it similarly presents, under Rule 807, the trustworthiness that is required, presents material relevant to a material fact, and it is more probative than the reasonable alternative, which would be a parade of these individual officials from across the State who would come in and testify for just a few minutes as to when their office accepts EIC applications, that they've accepted one, two, none, and that -- and the hours that they're open, and so under the Fifth Circuit case law in the District Courts within the Fifth Circuit there's little motive for truth or falsity, the materials at issue are simple and they go to the witness's personal knowledge, and there's no reason to direct these witnesses to come to Court to present this testimony.

THE COURT: All right. Mr. Clay, are you speaking on that?

MR. CLAY: Your Honor, I will be -- the first point I would make is that Rule 807 is -- is very clear, it's only to be used in rare exceptional circumstances, and those circumstances aren't met here.

The Advisory Committee about this Rule has said that it does not contemplate an unfettered exercise of judicial

discretion, and part of the problem here is that they've had these declarations for months, and not until last week were we really notified that they intended to offer them into evidence at trial. Had we known before the close of fact discovery it might have allowed us the opportunity that is contemplated under Rule 807 to counter the declarations, so we didn't have the opportunity --

THE COURT: So you-all think there's some information -- the State is contesting the facts set out here, do you think they're not correct or do you have reason to believe that they are not correct?

MR. CLAY: We don't have the ability -- we do not know whether they're correct which is part of the -- which is part of the problem. And we've also offered that we would provide the MOUs between DPS and the local counties, which they refused to do or refused to accept, and in one of these declarations, in particular, I think goes to the trustworthiness issue and that is of Carlos Segura. Most of these --

THE COURT: Which one is that one?

MR. CLAY: It is on the Docket -- it's Page 44 out of 130 on the Docket.

(Counsel confer)

THE COURT: 45?

MR. CLAY: It's Page 44 is what it says on mine --

THE COURT: Okay.

MR. CLAY: 44 of 130. You'll notice that Carlos Segura is -- his declaration is different than the others, and the others list their employment, who they are employed by, what their title is, and then they say, "As part of my responsibilities I accept and process applications for EICs."

Well, Carlos Segura is not that person evidently and, again, I don't know whether -- who is or who isn't, but evidently, based on his declaration, he is not the person who accepts and processes the applications in that county, and so there's an extra element -- a foundational element here that's problematic with Carlos Segura's, but -- but just with regard to all of the declarations you'll see that they're very similar and they appear to have been at least helped or aided by somebody in the Department of Justice because they're essentially identical and they span counties across all over Texas.

THE COURT: But how do you -- how do you say "we're open from this time to this time," we don't have that in so many different ways?

MR. CLAY: I'm sorry?

THE COURT: I mean, there's only a certain way to say "our offices are open Monday through Friday from this time to this time, I am the Elections Administrator, or I am X." There's not a whole lot of different ways to present this

information that is set forth in these declarations.

MR. CLAY: And I agree, and --

THE COURT: It's pretty basic.

MR. CLAY: And we would like to provide the Court with evidence of -- regarding the State's EIC Program. We think that's very important for the Court's consideration.

THE COURT: But isn't that a different issue than what I'm looking at right now? You can certainly argue that as to what you want me to do there, but all I'm considering right now is this Motion to allow these declarations to be admitted, not whether any other evidence should come in or -- so, really, what I'm looking at is the trustworthiness of this. It seems to be pretty basic facts, simple information, it could be easily contested. I mean, I don't know if the State really thinks there's some misinformation here about the hours of operation, what they do, what's happened, whether they're not disinterested -- you know, whether there are interested witnesses here. I --

MR. CLAY: Your Honor, I think all of the above, and it's not -- it's not that we think that they're not disinterested or we think that they're misrepresenting their hours; it's that we don't know if we were never given the opportunity to cross examine these people. I mean, this is a perfect example of when deposition notices could have gone out here in fact discovery. We didn't even know these existed

until after the close of fact discovery, and so we just don't have the reasonable opportunity to counter this that's contemplated by Rule 807.

MR. FREEMAN: Your Honor, if I may very quickly correct the record with regard to that. These declarations were provided as an exhibit to the Expert Declaration of Dr. Jerry Webster, and so the State received copies of these in June. Fact discovery has continued in this matter through, I believe, there is still one remaining outstanding legislator deposition that will occur tomorrow.

Moreover, these are individuals who have, as Mr. Clay just stated, contracted with the State in order to participate in the EIC Program. They are certainly aware of these individuals' identities. However, the information provided by the State on its web site does not provide a variety of the information provided in these declarations, including the hours when the EIC applications are accepted, with physical locations and the like, and that is precisely why we needed to present this information with regard to the efficacy of the program. The extent that the State wishes to offer information regarding the contracts that are between the State and these individuals, we will certainly address that information when they present it.

MR. CLAY: And, your Honor, this Court said, the Scheduling Order is very clear, fact discovery cut off at the

end of June, which was before we were provided these declarations.

And if the Court is inclined to enter these into evidence we would ask that it take a harder look at Carlos Segura who has a foundational problem and does not appear to have personal knowledge of the program.

THE COURT: Okay. Do you want to address Mr. Segura's declaration?

MR. FREEMAN: Sure, absolutely. If you'll give me just one moment to retrieve Mr. Segura's declaration from my computer? Or if Mr. Clay would give me the courtesy of letting me see the copy that he had had on the podium just one moment before?

(Pause, Counsel confer)

THE COURT: Do you want the Court's copy?

MR. FREEMAN: I'll have it in just one moment, your Honor.

MR. CLAY: I'm sorry, your Honor, I would provide it but I do have annotations on my copy.

MR. FREEMAN: I have it, your Honor.

THE COURT: Well, I don't, if you want to use the Court's copy.

MR. FREEMAN: Thank you, your Honor. Mr. Segura, I believe, is the Elections Administrator of Frio County and so because Frio County has two individuals who have received

training from DPS to accept and process EIC applications, he supervises those two individuals and, thus, was able to provide via his personal knowledge the information that those two individuals would collectively have; thus it was more efficient to provide one declaration than two with regard to Frio County, so that should resolve any foundational issues that Mr. Clay may raise. Otherwise, this declaration is very similar to the others as we have discussed. He states his position, he states the location that accepts EIC applications in Frio County, he states the number of EIC applications that they have accepted, which is zero, and he states the publicity efforts that Frio County has made with regard to EIC applications, which are none, and so it's merely the same material and the United States sees no reason to distinguish Mr. Segura's declaration from the other declarations that are currently before the Court.

THE COURT: All right. The Court is going to grant the Government's Motion to admit the declarations of the County officials except as to the declaration of Carlos Segura.

Anything else on that Motion?

MR. FREEMAN: No, your Honor.

THE COURT: All right. Then we have the Government's Motion to Strike, and then there's a Joint Motion by the other Plaintiffs also to Strike the Defendants' affirmative allegations and defenses. And, you know, after reading the

briefing, yeah, I agree that these matters that were set forth as affirmative defenses or allegations is not relevant to what we're going to be trying. I think the -- the Defense appears to agree to that, what -- there's a question as to whether they may be relevant to the equitable relief sought, but I don't think that's an issue for the trial that we're going to start next week.

So I don't think I really need to hear anything further. My inclination, I'm going to deny the Motion to Strike, but the parties are not to address those issues in this trial that we're going to start on September 2nd is the way I read the briefing.

MR. CLAY: Your Honor, is that without prejudice?

THE COURT: I'm not striking it, I'm just saying it's not coming in for this trial.

MR. CLAY: Oh, okay, I'm sorry. I misheard it. Thank you.

THE COURT: So I've denied the Motion to Strike. But if there's something I missed let me know and we can discuss it further, but that's the way I read the briefing that appeared to be agreed to on that matter.

MR. HEARD: Your Honor, just to -- just to be clear --

THE COURT: Well, maybe not agreed to, the Government wanted me to strike it all. But I just -- I'm striking it for

the purposes of the trial starting September 2nd, I'm not making a decision as to whether it's relevant to any equitable relief sought.

MR. HEARD: Indeed, your Honor, thank you. And I just wanted to clarify also that the Court is not -- is not going to take up their alternative Motion to relief to amend their Complaint?

THE COURT: Not at this time.

MR. HEARD: Okay. Thank you, ma'am.

THE COURT: Okay. All right, is that all on that, and that was DE-456 and 462?

(No audible response)

THE COURT: So I believe the last Motion pending is the Government's Motion to determine the sufficiency of the Defendants' responses to the request for admissions by the Defendants.

I issued a short Order on that yesterday just granting that Motion in part regarding the authenticity of the documents. That's a lot of documents. I think you-all need to sit and visit about that, and I believe that's what the Order tells you-all to do is to confer.

MR. HEARD: That was our understanding of the Order, your Honor. I believe that Ms. Baldwin and Counsel for Texas will be conferring sometime after the hearing today.

THE COURT: And you-all -- yes, you-all can confer

today and then I'm available if you-all can narrow it down for me.

MR. HEARD: Thank you.

THE COURT: Any other Motions pending, and I think some remaining Motions have already been mooted or you-all had discussed that with Brandy as to they were no longer -- it was not necessary for the Court to address anything further?

MR. FREEMAN: Your Honor, there is still the United States -- excuse me, the Plaintiffs' Joint Motion to unseal a select universe of the legislative documents?

THE COURT: Okay.

MR. FREEMAN: And just to bring to the Court's attention with regard to the Motion with regard to Request for admission, the State of Texas conceded yesterday in oral argument in *Perez v Perry* that racially polarized voting does exist as an empirical matter in all counties in the State except, I believe, with regard to Nueces County and Kleberg County, and so the issues with regard to the RFA should be relatively easy to resolve at this point.

THE COURT: Okay. Well, you-all are going to talk about that, right?

MR. FREEMAN: Yes. Your Honor, and this is ECF Number 503, the Joint Motion to Unseal.

Your Honor, the United States and the private Plaintiffs and Plaintiff Intervenors jointly seek to unseal a

very limited universe of legislative documents for use at trial, along with the expert report --

THE COURT: Can I just say something real quick?

MR. FREEMAN: Yes.

THE COURT: The only response I saw didn't really appear to be an objection. It appeared to be, is that all you have, well, go for it. So I wasn't sure -- is Mr. D'Andrea on the line?

MR. D'ANDREA: I'm right here.

THE COURT: Oh, I'm sorry, I didn't see you. That's the way I read your response.

MR. D'ANDREA: We think the Court is in a tough position with the balancing test, because I understand the Court's balancing test. You balance the importance of the documents to Plaintiffs' case, and their availability elsewhere, against the harm it will inflict. And it will inflict a chill, in fact, as we explained. Now, I think that, as we've said before, a lot of the harm has been done, but there is still more harm to be done if the Court admits that into the record. And on the other side of the ledger is very little, your Honor, because these documents mean so little to their case, both because there is so little substance and because they are now available elsewhere since your Honor has just let in tens of thousands of pages of legislative depositions from Section 5, along with other stuff. The record

in this case will already fill three law clerk's boxes on appeal. I just don't see a reason to let anymore --

THE COURT: Okay. And let me just say something. On the depositions, they're not just all coming in. It's excerpts as to what is going to be presented in this trial. That's the way I'm seeing things.

MR. FREEMAN: Yes, your Honor, it will only be excerpts, designations, from those depositions.

THE COURT: Mr. Scott?

MR. SCOTT: Well, that's one of the real concerns we have is making sure once we open the door to -- once the door was opened to this thing, any of this information coming in, there was a complete trial that took place in order to paint the correct picture, and that's why we stood and said the thing about the counter designations. The information that the Court will need to make, and whatever courts look at the ultimate Judgment this Court makes --

THE COURT: You-all have an obligation to try your case. I am the jury, I am the fact-finder, so you need to present your evidence and not just throw a bunch of stuff. There is some case out there -- I think it regards summary judgment evidence -- that says judges are not like pigs looking for truffles in briefs. And, you know, that implies very much so here. You can't just throw a bunch of depositions and evidence at this Court. You need to try your case.

MR. FREEMAN: Yes, your Honor. And we intend to both try our case in Court and, to the extent that it is useful to the Court, we will point to specific page and line citations in those depositions in our Proposed Findings of Fact so that this Court may --

THE COURT: You're not bringing in all the depositions.

MR. FREEMAN: No.

THE COURT: You are presenting to the Court the evidence you want the Court to consider.

MR. FREEMAN: Yes, your Honor, absolutely.

THE COURT: Okay.

MR. FREEMAN: With regard to the legislative privilege issue, however, the limited universe of documents that the United States seeks to bring in are certainly relevant to the claims before this Court. We are somewhat hamstrung in our ability to discuss exactly why these documents are probative, because we are in open court and they remain under seal. However, as set out in the United States' briefing, there are -- we set out just a few of the specific instances under which the United States and the Plaintiffs, as well as the expert historians in this case, believe that these documents are highly probative of the intent of the legislature. The standard is not whether or not there is a smoking gun or racist statement. The standard is whether they

are probative, highly probative perhaps, of the intent of the legislature and whether the legislature intentionally is enacting a bill that it knows is going to have a harmful effect on Latino and African American voters, and that's what the documents at issue show.

With regard to any potential chilling effect, these are very similar documents to what were produced in *Perez v Perry*. In the briefing, we provided an exact parallel between some of the documents that have been placed under seal here and documents that were openly produced in *Perez*. And the two thousand -- there is no evidence before this Court, no actual evidence, that the 2013 re-redistricting process conducted by the Texas Legislature was in any way hindered by the fact that depositions were taken in *Perez v Perry*; the fact that there was large-scale document productions in that case.

And so we believe that there is no real evidence that, as the Court in *United States v Irvin* found, the occasional use of these types of documents in highly important cases where there is an important federal interest in vindicating the rights of Latino and African American voters throughout the state, is going to truly chill legislative deliberation.

Moreover, the fact that counsel for the legislators filed his brief without placing it under seal shows that these are not real concerns. And so we believe that this limited

universe of documents and the documents that are relied upon in Professor Davidson and Professor Lichtman's reports, as well as the limited deposition designations for testimony that was freely given in depositions should be allowed to go. And we are not moving to compel anything that -- when legislators declined to answer questions based on legislative privilege.

THE COURT: So you're just looking at what is set forth on Page 4 of your motion; just documents regarding those bullet points?

MR. FREEMAN: No, your Honor, it's a somewhat larger universe of documents than that. That was provided merely as a sample.

THE COURT: Okay. Well, I --

MR. FREEMAN: I believe Exhibit --

THE COURT: I need to know. I mean, we're going back to the first thing I discussed here. I need to know exactly what it is you-all are looking to unseal.

MR. FREEMAN: Your Honor, Exhibit 1 to the motion was the list -- was the -- sorry -- the Plaintiffs and Plaintiff Intervenors' Joint Exhibit List. On that list, there are designated documents that have been designated as highly confidential; those that are designated highly confidential because of their legislative origin.

THE COURT: There is a list here. It has thousands of documents. So I need to know which ones you're talking

about.

MR. FREEMAN: Your Honor, I could read that into the record. I do have that list if that would be useful. If the Court would like me to provide the digital copies of all one hundred and --

THE COURT: Are you talking about the Exhibit 1?

MR. FREEMAN: Yes.

THE COURT: Which part of that? I mean, all of that?

MR. FREEMAN: No, your Honor.

THE COURT: Everything that is set there?

MR. FREEMAN: No, your Honor.

THE COURT: Well, that's what I'm asking.

MR. FREEMAN: That is Plaintiffs and Plaintiff Intervenors' complete Joint Exhibit List. I believe there is column on that list that says whether something has been marked as highly confidential and that column, unfortunately, includes both documents that are highly confidential because of the legislative privilege designation --

THE COURT: Which documents are you seeking to unseal I guess is the better question?

MR. FREEMAN: Let me go back to the computer very quickly, your Honor.

(Pause)

Your Honor, the parties are seeking to unseal the expert Declarations of Professor Davidson and Professor

Lichtman so that those experts will be allowed to testify in open court.

In addition, the parties are seeking to unseal those -- I believe, the depositions of -- the designated portions of depositions of 11 legislators whose depositions were taken in this case that were either in part or in whole under seal.

And if the Court will give me just one moment.

THE COURT: Okay. Let me ask this.

MR. FREEMAN: Sure.

THE COURT: What you set forth on Page 4, those bullet points, --

MR. FREEMAN: Yes.

THE COURT: -- those documents regarding those issues have been discussed with the defense?

MR. FREEMAN: Yes.

THE COURT: And there's --

MR. FREEMAN: Counsel for the legislators, Mr. D'Andrea, said that the -- we met and conferred, and that the legislators were, as a general matter, not going to consent to unsealing any of these materials.

MR. D'ANDREA: No, your Honor, my -- I'm sorry, Dan, I interrupted you.

MR. FREEMAN: Sure.

MR. D'ANDREA: I would add that my understanding was what we were consenting to was the huge list of all the

depositions and every confidential exhibit that was on the list.

THE COURT: Again, you need specifics --

MR. D'ANDREA: Right.

THE COURT: -- as to what they're seeking to unseal.

MR. D'ANDREA: But, I mean, I looked at a lot of those documents and some are going to lack foundation, some weren't brought up in the deposition and so we don't know what they are, some were --

THE COURT: I'm not going to sit here and pick through each. That's something you-all need to discuss.

MR. FREEMAN: Your Honor, I'm happy to discuss the documents one by one with Mr. D'Andrea if that's necessary. And to the extent that the State --

THE COURT: Well, I mean, do you want to discuss it one by one with me?

MR. FREEMAN: Uh.

THE COURT: I don't think so.

MR. FREEMAN: So, to the extent that the Court wishes --

THE COURT: I don't want to.

MR. FREEMAN: So what I would -- what is perhaps not going to be possible is to discuss the Declarations of Dr. Davidson and Dr. Lichtman, given that those Declarations are not -- they're not an exhibit; they're not the same type of

material.

THE COURT: Are they testifying at trial?

MR. FREEMAN: They are, your Honor. Well, they will if they are allowed to. There is the concern that the material that they have relied upon has been placed under the highly confidential designation.

MR. SCOTT: Your Honor, this is where I think the United States and State of Texas Defendants, the people I represent, are with a unified voice. To the extent there is a legislative privilege that's gone by the Court that decides there is no more legislative privilege, we believe wipe the thing out, let's get the whole record and parties can bring anything they want here. Mr. D'Andrea and Mr. Eccles and Ms. London represent those legislators. That's a different issue. So I want to make sure the Court is clear on what the roles of the parties are.

I want the full record in the Court. There are attorneys out there, who differ from the position of me, that represent those individual legislatures. But from the State of Texas, we want the whole record entered.

MR. FREEMAN: Your Honor, and there's a very different type of motion that the United States and the Plaintiffs, the private Plaintiffs, have made versus what Mr. Scott is saying, because we are looking only at a very narrow subset.

THE COURT: But this is my problem. I need to know what it is you're looking to unseal, which documents, which exhibits, how they're going to play out, how they're relevant to the case. It may be we need to do it, you know, through the trial. I'm not sure because I don't know how much you're talking about. How time consuming that's going to be, I don't know, for the Court to address. But that's what I'm looking at. We can't talk in generalities anymore. This, you know, documents related to X, Y, and Z. Which documents are we seeking to unseal so the Court can look at those in relation to the testimony, what's relevant, what, you know, looking at all the factors as to whether they should be unsealed or not. I don't think I can do that with just, oh, we want to look at, you know, unsealed matters regarding X. What documents and how many are they that I need to review and look at and make a determination on that? It's really an issue. I mean, I thought, and I didn't go through all the documents because I thought, one, it would be a waste of time; two, I wasn't really sure there was an objection in the manner it was phrased. So I thought, well, I'm not going to spend my limited time going through a bunch of documents that I'm not really sure which ones are at issue. And maybe, you know, we're not talking on the same page. I don't know.

MR. FREEMAN: Your Honor, to the extent that Mr. D'Andrea is now willing to withdraw his blanket objection

to any introduction, I'm happy to speak with him. And to the extent that this Court does wish to engage in any in-camera review, I have the complete list of documents here and we can submit electronic copies to the Court in a secure fashion, either by filing them under seal or by emailing them to Ms. Cortez.

THE COURT: When you're saying -- did you submit those to the -- all I'm seeing here is an Exhibit List that goes on for like thousands of exhibits.

MR. FREEMAN: Your Honor, there's a column on that Exhibit List marking which of those documents has been designated as highly confidential, and it's those documents.

THE COURT: So the ones that have "yes" are the ones you are seeking --

MR. FREEMAN: Yes, your Honor.

THE COURT: -- to unseal? And how many are those out of those thousands?

MR. FREEMAN: One hundred and twenty three, your Honor, by my count.

THE COURT: And those have been specifically discussed with Mr. D'Andrea?

MR. FREEMAN: I met and conferred --

THE COURT: See.

MR. FREEMAN: -- with Mr. D'Andrea on the phone --

THE COURT: He's saying no.

MR. FREEMAN: -- and Mr. D'Andrea told me that the legislatures were not going to be willing to unseal any documents. And so it was my understanding that any further attempt to meet and confer would be futile. To the extent that that has changed, I am more than willing to discuss individual documents with Mr. D'Andrea.

MR. D'ANDREA: I'd also be happy to have a lunch date and do that.

THE COURT: Okay.

(Laughter)

So maybe what we'll do -- maybe you-all can do it today at lunch so we can kind of finalize all this and wrap it up. So you-all are going to discuss that further.

I need to just see, here's what it is you -- these documents are -- and it may be that I need to wait and hear some testimony as to how they play out and come in and how they're relevant to the case so that I can apply the factors.

MR. FREEMAN: Your Honor, may I just ask, specifically, how the Court would like to handle the testimony of Dr. Davidson and Dr. Lichtman in that case?

THE COURT: What's the issue?

MR. FREEMAN: Regarding the testimony that they've offered, and as well as with regard to --

THE COURT: So they were deposed?

MR. FREEMAN: They were deposed in this case, yes.

But their reports rely, as they are -- Dr. Davidson is a sociologist who is, perhaps, the leading expert on the history of discrimination in voting in Texas. Dr. Lichtman, I believe, is a political scientist, and they have both relied heavily on the documents that have been produced under seal in this case in order to provide the Court with a full picture of their analysis of the intent of the legislature under pending SB14.

THE COURT: Okay. So what's the question for the Court?

MR. FREEMAN: The question is whether they will be permitted to testify in open court, given that their analysis touches on the documents?

THE COURT: Well, why don't you-all discuss the documents, see what's at issue, and then maybe we can discuss it further?

MR. FREEMAN: Okay.

THE COURT: Those are part of the documents of the 123?

MR. FREEMAN: It's my understanding they are but I am not 100 percent certain. I believe that my co-counsel would, perhaps, know better. If you'll give me just one moment your Honor?

(Pause)

MR. SPEAKER: Just so you know, I can hear it over here on the speaker.

(Laughter)

MR. FREEMAN: It's nothing that exciting.

(Laughter)

Your Honor, it's my understanding that it's a somewhat broader universe than the 123 documents, but it's what those historians believe to be appropriate.

THE COURT: So have you-all discussed it with the defense yet?

MR. FREEMAN: Again, we can -- perhaps Mr. D'Andrea can review those Declarations and let me know if there's a problem.

MR. D'ANDREA: Some of this is a matter of timing.

MR. SCOTT: And, no --

MR. D'ANDREA: It's not too late for that --

MR. SCOTT: No, and this is where they're interconnected, your Honor, because to the extent those experts are now relying upon documents that are highly confidential and been provided by one side, does their opinion change at all if they are given access to these documents that were also a part of that legislative body? And so that's how they all kind of intertangle, from our position.

THE COURT: You know, my problem is I don't know what those documents are and unless you-all are going to be specific in what you're presenting to the Court, you know, I'm not comfortable ruling on matters.

MR. FREEMAN: Okay. Your Honor, I guess --

THE COURT: So I understand you-all are going to discuss it further, give specifics to the Court, and then I'll be glad to rule on that.

MR. FREEMAN: Apparently, my co-counsel has alerted me that nearly all of the designations of legislator depositions have also been marked as highly confidential, and so -- and my co-counsel has cautioned me that it may not be possible to ask Mr. D'Andrea to review the entirety of those deposition transcripts prior to the commencement of trial.

THE COURT: Okay. Isn't that what final pretrial is for, that we should be flushing this out? And I just feel like you-all are still speaking in generalities at the final Pretrial Conference. That's not efficient.

MR. FREEMAN: Okay.

THE COURT: I just -- unless I'm missing something, that's the point. We now have all these exhibits. Where's the rub? What's the problem? These are agreed to; these are not. And I know you-all are still working on that and you-all are supposed to provide objections to witnesses and exhibits on Friday, so we can't address that today.

But I just think this is a sensitive issue, it's a critical issue, and I can't just be making rulings without really knowing what it is before the Court.

MR. FREEMAN: Your Honor, we will endeavor, as much

as possible, to narrow the disputes before the Court. It was our prior understanding that there was a blanket objection, and we're very glad to hear that there no longer is. And we will do our best to --

THE COURT: But, you know what? Even when there's a blanket objection, you have to go through each one if you're going to ask me to rule on it, right?

MR. FREEMAN: We'll do our best, your Honor.

THE COURT: I'd just rather not do it if you-all haven't done it together yet, okay.

MR. FREEMAN: We'll endeavor to do our best. Thank you.

THE COURT: Thank you.

So, any other motions pending?

MS. WOLF: Your Honor, this is Lindsey Wolf for the State of Texas. More of as a housekeeping matter, docket entry 469, which was the Defendants' Motion to Compel the Production of Documents from various non-United States Plaintiffs, is still pending. However, we've made very, very much progress with the Plaintiffs in working on Stipulations and we're still hammering out the final details and we expect that those will be filed with the Court, but for housekeeping purposes that is.

THE COURT: That's still pending?

MS. WOLF: Yes.

THE COURT: Is that the -- are those the only motions

then that are alive?

MR. DUNN: Your Honor, this is Chad Dunn on behalf of the Veasey/LULAC Plaintiffs. We still have a motion concerning the amicus status of Dallas County, though we're holding that until there is an actual pleading to file and we'll confer with the State before we raise it again.

THE COURT: Okay. So no other motions for the Court to rule on today, correct?

(No audible response)

Let's see. So, let's move on to the logistics of the trial. And I think in some of our status hearings we talked -- the parties asked for 40 hours per side, which would include opening and closing. I'm going to make a suggestion and then I am open to comments, but I think we need to strive to get eight hours of actual trial testimony each day, which I think would have us working from 8:00 a.m. to 12:00 p.m., 1:00 p.m. to 6:00 p.m., mid-morning break, mid-afternoon break. That gives us, you know, maybe another 30 minutes to play with. But by 6:00 o'clock, if we haven't gotten our eight hours in, we're going to continue working until we get the eight hours in. That's my proposal, but I am open for comments and suggestions.

MR. ROSENBERG: Good morning, your Honor, --

THE COURT: Good morning.

MR. ROSENBERG: -- Ezra Rosenberg. Starting with the last thing your Honor mentioned, I think the eight hours would

work great for us. We've tried to put together a schedule and we want to make sure that there is no down time for your Honor. We were working on a seven hour schedule, but we can easily adjust that. And we would make sure that we would fill up any possible dead time with highlighting the deposition designations that we think are of particular importance.

One point that I do want to address. You mentioned the closings in 40 hours.

THE COURT: Or maybe we should talk about it. How much time are you-all looking at for opening and closing, and then maybe I can budge on that?

MR. ROSENBERG: Well, openings, if your Honor wished them, we thought they would be relatively short, but that would count against our 40 hour time. The closings, we thought your Honor would set that at the -- you know, towards the end of the trial but then that would not be within the 40 hours.

THE COURT: Okay. But any idea, just a rough idea, as to how long the closing might be?

(No audible response)

And I'm not going to hold you to it. I'm just trying to plan here.

(Pause)

MR. ROSENBERG: Plaintiffs would be comfortable with two hours total for closing.

MR. SCOTT: Your Honor, our idea probably would have

been maybe a lot closer to, like, oral arguments in the Court of Appeals, obviously. So, you know, maybe 10 to 15 minutes and then answer any questions the Court has to clarify.

THE COURT: Okay.

MR. SCOTT: And then go through that process.

THE COURT: So two to three hours for the whole thing probably, for the whole closing. That's fine.

MR. SCOTT: Sure.

THE COURT: All right. And the opening? I'm sorry, what did you say on the opening?

MR. ROSENBERG: Openings we thought would be relatively short and perhaps a total of a half hour for Plaintiffs.

THE COURT: Okay.

MR. SCOTT: That's more than adequate.

MR. ROSENBERG: And we're happy if the State wants to use less time.

(Laughter)

THE COURT: Well, I'd be happy if everyone uses less time, but --

MR. ROSENBERG: Yeah.

(Laughter)

THE COURT: Okay. So what else were you going to discuss on that?

I know that the Defendants in particular had

mentioned about having to do some offers of proof. That would have to be done outside those eight hours, so I don't know how much you're looking at in total.

MR. SCOTT: And I don't know either, your Honor.

THE COURT: Okay.

MR. SCOTT: It depends on what the Court rules. Hopefully, we don't use any of that time.

THE COURT: I thought there was some particular issues, though, that maybe I had made rulings on --

MR. SCOTT: I think there are.

THE COURT: -- that you asked about.

MR. SCOTT: Yes, I think there are some matters that we've been limited in discovery that we will go through some witnesses and establish a record on that. We're also going to try and do that probably through some deposition testimony and some -- at least with regards to some of those areas. So we'll try and reduce that as much as possible, but if we could tell the Court maybe the day before; if you want to set up a day where just like we get finished early in a day, great, we'll tee it off on that.

THE COURT: Okay.

MR. SCOTT: We compartmentalized as much as possible.

Eight to 12:00 p.m. and 1:00 p.m. to 6:00 p.m. was what you proposed, right?

THE COURT: Yes. I think that's how we get our eight

hours in, with a little break in the morning and a little break in the afternoon and one hour for lunch and a little fudge time.

MR. SCOTT: And we're willing to go Saturdays and Sundays if need be, your Honor, --

(Laughter)

-- to get more time in there and to get through it. Not that we don't love Corpus; we do.

THE COURT: We can play it by ear and see where we are.

MR. SCOTT: Okay.

MR. ROSENBERG: Yeah, I think we would -- we haven't really called everybody, but I think we'd have to play that by ear.

THE COURT: Okay.

MR. ROSENBERG: And I did want to bring up a couple other logistic issues if your Honor will --

THE COURT: Okay.

MR. ROSENBERG: One, the -- I think the existing Orders anticipate a Supplemental Findings of Fact based upon late discovery on September 2nd. We conferred with the State and I think all Plaintiffs would be agreeable that any supplementation of the Findings of Fact await the conclusion of trial and that towards the end of the trial we'll confer and see if that should be done 48 hours, 72 hours, after trial.

But we'll reach something that works for everybody.

THE COURT: All right.

MR. SCOTT: Otherwise, we're giving you a bunch more paper that's useless.

MR. ROSENBERG: Yeah.

THE COURT: I agree.

MR. ROSENBERG: Next, I think, on exhibits we're going to provide the Court with three copies of exhibits on a CD.

THE COURT: And can I just ask, because there was -- the Exhibit Lists that were provided -- and I know you-all still are conferring on objections. There's thousands of exhibits, so what -- I mean, what can I expect, what are we looking at; types of objections or categories or?

MR. ROSENBERG: Yeah, that's a great question your Honor. I think what we have to do in order to make life easier for your Honor is after we exchange our objections, immediately get on the phone with each other and see if we can narrow it down to the bare minimum. So, there is just too many exhibits for your Honor to have to deal with and I think we will certainly approach it from the Plaintiffs' side reasonably, and I'm assuming that the State will approach it from their side reasonably.

MR. SCOTT: Yes.

THE COURT: All right. And witnesses in the same

situation I guess?

MR. ROSENBERG: Deposition designations, same thing. We will -- as soon as we get the objections and the cross designations we will sit down and try to narrow the universe.

THE COURT: But even -- I think there's going to be some objection to the Witness Lists, correct?

MR. ROSENBERG: Uh.

THE COURT: Or, no. I thought that's what I was hearing somewhere, --

MR. ROSENBERG: I don't think so.

THE COURT: -- as to certain --

MR. ROSENBERG: I've not heard of that.

THE COURT: Okay. I thought you-all were going to --

MR. ROSENBERG: And we have agreed that we will tell each other who our next -- who are witnesses are 24 hours in advance.

THE COURT: And I guess the ones that you-all are going to call, or present by Declaration, for the direct testimony or deposition -- the ones you-all are going to present by document or by paper on the direct and then they're going to be available for cross, correct. When will we be getting that or when am I going to be getting those Declarations?

MR. SCOTT: That's something that was a bit troubling from my standpoint. On the Exhibit List, the Plaintiffs have

added a bunch of Declarations and I don't view a Declaration as an exhibit and so I would assume that it's not a part of the record until the person sits down on the bench and in the stand. And so, I guess the process would be the night before they would let us know. We've agreed to exchange who we're going to be calling the day before.

MR. ROSENBERG: Yeah.

THE COURT: I know. You just need to consider my time in having to review that before they get on.

MR. ROSENBERG: And, your Honor, I think that --

MR. SCOTT: So two or three days?

(Pause)

MR. ROSENBERG: Yeah, I think that pretrial directs would be due today and I don't think we're filing any pretrial directs.

THE COURT: No pretrial directs?

MR. ROSENBERG: The Declarations -- the ones that I know, other than Declarations that Mr. Freeman addressed earlier, primarily from our side are the expert Declarations, which your Honor already has.

THE COURT: Okay.

MR. ROSENBERG: And the idea there is that the expert will come on the stand, probably highlight certain issues, but not everything in the Declaration, but everything in the Declaration is open to cross-examination.

MR. SCOTT: Yes.

THE COURT: Okay. And there is a lot of those, so I just need some sort of timeline, I guess, as to how we're going to proceed. Obviously, you-all are going to be letting each other know which witnesses are going to be called the next day, but even if you can give me a couple of days heads up it would be helpful.

MR. ROSENBERG: We're happy to. You know, as I said, we've been working on our schedule --

THE COURT: Okay.

MR. ROSENBERG: -- and we will give your Honor -- if your Honor wants two days, three days advance, knowing that there might be some slippage depending on --

THE COURT: Right.

MR. ROSENBERG: You know, we've been trying to estimate how long Mr. Scott is going to spend cross examining our people and things like that.

THE COURT: So the Plaintiffs are not going to present direct evidence then, just the Declarations; direct evidence in terms of filing --

MR. ROSENBERG: Pretrial directs.

THE COURT: -- pretrial direct.

MR. ROSENBERG: No.

THE COURT: No. The defense?

MR. SCOTT: No.

THE COURT: Okay.

MR. SCOTT: The only Declarations we would --

THE COURT: Okay. I was concerned there was just going to be a lot of that that I was going to have to be reviewing before the witnesses took the stand before they were cross examined, so that doesn't look like it 's going to be a big issue then.

MR. ROSENBERG: No.

THE COURT: Okay, good.

MR. ROSENBERG: Deposition designations, we've exchanged the original ones. The counter designations are due, I guess, today.

MR. SCOTT: No, they're due Friday.

MR. ROSENBERG: Friday. As I said, we will try to --

MR. SCOTT: Some are due today and then Friday is the objections.

MR. ROSENBERG: Right.

MR. SCOTT: Yes.

MR. ROSENBERG: But we will try to narrow the universe for your Honor.

We're going to add -- each side is going to add the counters to the highlighted copies that we'll provide your Honor. We'll color code it so you can tell direct designation from counter.

We're going to provide your Honor with a full set of

condensed transcripts for both parties, with the highlighted designations if that works. And if there's anything else your Honor needs in that regard, please let us know and we'll endeavor to do whatever.

In terms of video depositions, there are going to be some video depositions. And people can correct me if I'm wrong but I'm not sure if we have an agreement yet exactly how that's going to be provided in terms of whether -- maybe your Honor has a preference. Would you like to see let's say Plaintiffs' video designations and then that stops and then Defendants come with their counter designations on video?

THE COURT: I'm fine either way. Some parties prefer if they're presenting their case they want to do all their excerpts and then the other party follows up. If you-all want to get together and present the whole thing, I'm open to either. If you-all don't agree, you know, let me know and I'll make a ruling.

MR. ROSENBERG: Okay.

THE COURT: But I tend to allow the party presenting the case to present his case as he sees fit.

MR. ROSENBERG: Great. Thank you, your Honor. And we will work with Ms. Cortez to make sure that the video formats and everything work with whatever system your Honor has.

And are there any other questions that we might

answer?

THE COURT: Anything else from anyone on the presentation of the case?

MR. SCOTT: The Court adding the universe of the prior Section 5 is an aspect that's a little bit of a surprise from our perspective, and so we'll do -- I don't want to do -- I'm cognizant of the hog analogy and I'm not ever trying to go down that path.

THE COURT: All I'm saying is you're trying your case to this Court and you need to, as if a jury was here and you were calling a witness or you were going to present deposition and you might read page and line or whatever it was. I'm not telling you to, you know, you're going to take up that time. You-all are going to present it to the Court. But you need to let me know what it is. I mean, I know at one of the status conferences you-all asked, do we just submit the entire depositions, or I don't know what the question was. That's not the way you try a case. So try your case like I'm, you know, a sole juror here, but like you're trying it to a jury. It's going to be massive. It's going to be a lot. You need to advocate well, and this is not advocating well. You're a fact finder, find it yourself.

(Laughter)

THE COURT: Right?

MR. SCOTT: And, your Honor, I think --

THE COURT: You-all are all very well experienced. I know we're not going to do that, but you know I'm a little concerned about some of that happening because of the limitation on the amount of time. But that's not going to be helpful to anybody's case.

MR. SCOTT: And we have back-end loaded this so there has not been any time from all the parties' standpoints. So everybody has been in depositions. I know that a 12 hour week of sleep has been a great week over the last three weeks. And so I think that from our perspective we're trying to make sure that we've also got a good record for the appellate level. And so I think that's something that all the parties share is an understanding of why we're not trying to dump an enormous amount of data on you. We just want to make sure that the record is clear, whoever ends up looking at this thing.

MR. ROSENBERG: Yeah.

THE COURT: Well, you're not going to try your case like that.

MR. SCOTT: Okay.

THE COURT: You're not just going to dump evidence for appeal. You're trying -- this is a trial. We're at the District Court level, you are making your presentation of the evidence, and we're not dumping evidence on the fact finder.

MR. SCOTT: And so, from that standpoint, your Honor, is it the Court's view that our -- any designation relating to

the entire Section 5 transcript -- again, it's three rooms -- are due today or are they due Friday or is that something we can have a rolling leeway to try and kind of parse through and get you the best stuff available?

THE COURT: Well, have the Plaintiffs designated?

MR. ROSENBERG: We have designated from the Section 5 case in support of specific --

THE COURT: And you've provided that already?

MR. ROSENBERG: Yeah, in support of specific findings of fact.

THE COURT: Well, I suspect that's going to limit your --

MR. SCOTT: Okay.

THE COURT: -- what you're looking at.

MR. SCOTT: We'll throw it in there, your Honor.

MR. ROSENBERG: And just so it's clear, as I understand, your Honor wants us to read into the record before your Honor those aspects of the deposition designations that we feel we need to support our case?

THE COURT: I don't know that you need to read into the record; you need to just give me that portion or you need to just highlight that portion. I realize with your 40 hours you are limited, and that's what you-all were trying to save on that. So, you know, you present your case as you see fit, you know, what would be better for the fact finder to realize and

connect as to what's important about this evidence that's being presented. You know, if I'm just reading something here -- you know, you present your case as you think is best. You can present that to me without reading it into the record. I just -- I guess my point is I don't want the entire deposition; here, this is what we would have presented if we had called the witness.

MR. ROSENBERG: No.

THE COURT: That's --

MR. ROSENBERG: We are not doing that, your Honor.

THE COURT: Okay.

MR. SCOTT: I just want to make sure on - -

THE COURT: And don't let your appellate lawyers talk you into doing that.

(Laughter)

Who are they so I can peg them?

(Laughter)

MR. DONNELL: It's not me.

MR. SCOTT: It's not me.

I just want to make sure that there are some designations in that entire record. I think when that door opens, and it's open now, in order for this Court to have a full understanding of what is getting presented by their designation, I don't want you to be surprised by the sheer volume, which was obviously --

THE COURT: You-all have 40 hours, so the Plaintiffs are going to -- you know, we'll see where it takes us.

MR. SCOTT: Okay.

THE COURT: I think that should kind of limit matters by your time limit.

MR. HEBERT: Your Honor, Gerry Hebert for the Veasey/LULAC Plaintiffs. I just want to -- we have factored into our 40 hours of time selecting certain deposition excerpts that -- and we actually took it from a comment your Honor made at one of the earlier hearings, that there's a lot of documents and you're not going to be able to read everything so we need to present you, the fact-finder, with the specifics. So, in those instances, we have built into our 40 hours time to actually read some of the depositions.

THE COURT: I think that's the best thing.

MR. HEBERT: Okay. We do too.

THE COURT: You know. And Mr. Scott is saying yes too, so --

MR. SCOTT: Absolutely.

THE COURT: Okay.

MR. SCOTT: We're going to show you the gold nuggets. We're not going to --

THE COURT: You're not going to make me --

MR. SCOTT: -- make you dig around.

THE COURT: -- dig for truffles?

(Laughter)

Buried in here, it would be evidence.

(Laughter)

But anyway. All right.

Anything else on the logistics?

(No audible response)

Or any other matter?

You-all have got a lot of conferring to do, so I don't know what you-all plan.

MR. DUNN: Again, Chad Dunn, your Honor. I didn't understand some comments earlier. Are we supposed to come back after lunch or do you want us to set up a call tomorrow?

THE COURT: I am available if you-all need the Court to make some rulings, so we can move on. I just don't know how long it's going to take you-all to confer. Ms. London is here. You-all need to address her issue first.

MR. SCOTT: I told Ms. London that's the first thing.

THE COURT: Okay.

MR. SCOTT: I'm going to immediately meet with her.

MR. DUNN: Would it make sense then to --

MS. LONDON: Can we tentatively agree to a time to come back because I'm hopeful, since our agreement was that they're supposed to identify what they're actually going to use, that we could.

THE COURT: Okay. It's 10:20 a.m. You-all want to

come back at 1:00 o'clock? I mean, do you-all think you-all will get it done before noon?

MR. SCOTT: Do you think we can go through that many pages?

THE COURT: How about a status at 11:45 a.m.? Status?

MS. LONDON: I have no idea what you have. I have no idea how many of the documents you intend to use. That's the point.

THE COURT: Why don't you-all come back at 1:30 p.m. and it's going to be like a status to see where you-all are at?

MR. SCOTT: And if we've got some resolved, or close to it, we'll let the Court know.

THE COURT: Just let Brandy know.

MR. FREEMAN: Your Honor, is it possible -- with regard to the legislative documents, I'm not sure how long it will take. If we're not able to resolve it today, would it be possible to get on the phone in order to address whatever outstanding issues there are?

THE COURT: Yes. You-all are going to start conferring now?

MR. FREEMAN: Yes, absolutely your Honor.

THE COURT: Why don't we do a status by the end of the day for you-all, or 3:00 o'clock?

MR. FREEMAN: I currently plan to be on a plane at

3:00 o'clock, but if --

THE COURT: Okay, well when are you going to visit?

MR. FREEMAN: -- I need to change the plan I need to.

THE COURT: This is a serious matter.

MR. FREEMAN: Absolutely, your Honor.

THE COURT: When are you going to visit with him?

MR. DUNN: Your Honor, can I make a proposal perhaps?

THE COURT: Yes.

MR. DUNN: Should we just schedule a phone conference maybe tomorrow at 1:30 p.m. and then they can confer up until then, and they'll have a hard deadline and nearly -- or, a little more than 24 hours for us all to talk, because there is also a deposition this afternoon.

MR. ROSENBERG: Right. We have a witness who flew in.

THE COURT: I don't mind doing that, but this is the whole point -- and I know you-all are still doing depositions and everything else -- is we're going to start eating into our trial time if we don't resolve all these matters. That's what final Pretrial Conference is for, to limit the matters that are going to have to be addressed during the trial, and this is massive stuff, lots of exhibits.

MR. SCOTT: And, your Honor, from my perspective, we go back to the advisory we filed with the Court very early when we set up the schedule. From the Texas standpoint, the most

important thing is the impact on the upcoming November elections and the early cycling. So I appreciate the Court saying that we don't want to get into that trial time, and that's why we're willing to go seven days a week, and if the Court says 14 hours a day we'll do that. We do not want confusion in the elections as a result of the impending matters in this case. So that's our magic goal going into this. Everything else becomes secondary from our standpoint.

THE COURT: Okay. I don't mind doing a conference call at 1:30 tomorrow. We're not talking about Ms. London's issue, because you-all are going to address that now.

MR. SCOTT: Yes.

THE COURT: And we're going to convene this afternoon for a status hearing.

But on the other issues the problem is I'm not going to have a heads up to start making rulings tomorrow afternoon, right?

MR. ROSENBERG: Right.

THE COURT: We're going to confer about where you-all are at?

MR. ROSENBERG: Yeah, well, and particularly in terms of exhibits or deposition designations we're not going to even be there until Friday anyway.

THE COURT: I just -- you-all are going to start eating into the trial time next week, but that's fine if you-

all want to confer and then we convene for that phone status conference at 1:30 tomorrow.

MR. ROSENBERG: Okay. Thank you, your Honor.

THE COURT: Any other comments?

(No audible response)

Okay. If nothing further, then you're excused.

MR. DUNN: Thank you, your Honor. So we are coming back here, though, today on the other issue?

MR. ROSENBERG: No.

MR. DUNN: Okay.

THE COURT: Well, that -- I don't think that's your issue, right? I think it's Mr. Scott and Ms. London.

MR. SCOTT: We're going to knock that out right now.

THE COURT: I don't know who else is going to stay for that, but they're going to go discuss that and they're going to come back. She needs to hammer that out.

MR. ROSENBERG: Yeah, okay.

MR. DONNELL: Thanks your Honor.

(Discussion held off the record)

THE COURT: Everyone is going to go off to confer and we're going to have a phone conference tomorrow at 1:30 p.m.

(Discussion held off the record)

MR. DUNN: I'm sorry to be -- your Honor, does that mean Ms. London and Mr. Scott are to be here at 1:30 for a hearing today or are they just supposed to let you know by

1:30?

THE COURT: She wants the issue resolved, so they're going to go confer and if I can resolve that issue I'm resolving it. I don't think it really --

MR. DUNN: It doesn't affect me.

THE COURT: Okay. If it doesn't affect you, you don't have to be here.

MR. DUNN: Okay.

(This proceeding was adjourned at 10:23 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

August 29, 2014

TONI HUDSON, TRANSCRIBER